document which was signed by the Chairman of the Authority which read as follows:—

"In pursuance of a Resolution passed on 27th November, 1957 by the Authority, I hereby delegate under Section 12 of the R.I.D.A. Ordinance No. 48 of 1953, to Inche Ahmad bin Abu Samah, Assistant Rural Development Officer, Trengganu the power and authority to sue or defend on behalf of the Authority and for such purpose to attend and appear on behalf of the Authority at any proceedings . . . . .".

The relevant sub-sections of section 12 of the Rural and Industrial Development Authority Ordinance, 1953, are sub-sections (1) and (2) which read as follows:—

"(1) Subject to the provisions of this Ordinance, the Authority may delegate to any member of the Authority or to any committee the power and authority to carry out on their behalf such duties, powers or functions as the Authority may determine, and may authorise any committee to delegate to any sub-committee thereof or to any person any duties, powers or functions delegated to such committee.

(2) The Authority may at the time of delegating any power or authority under sub-section (1) to any member or committee or at any time thereafter give directions as to the manner in which such delegated power or authority is to be exercised and may at any time revoke, modify or increase such delegation."

The Authority is a body corporate and may sue and be sued in its name (Section 3).

It will be seen that the Authority may delegate its powers to:—

(i) any member of the Authority, or

(ii) any Committee,

and such delegation may authorise any Committee to delegate to:—

(a) any sub-committee, or

(b) any person

any of the duties, powers or functions delegated to such Committee. The Authority may also at the time of delegation give directions to:—

(i) any member of the Authority, or

(ii) any Committee

as to the manner in which such delegated power or authority is to be exercised.

The meaning of the word "member" or "member of the Authority" is defined in section 2 of the Ordinance as meaning any member of the Authority appointed by virtue of or under section 5 of the Ordinance.

It would appear, therefore, that the only way in which a person who is not a member of the Authority can be authorised to carry out any of the duties, powers or functions of the Authority is for a Committee so authorised by the Authority in the delegation of authority to that Committee to delegate its powers to any person.

The document which was produced in this case does not disclose the terms of the Resolution passed on the 27th November, 1957, but in any event it does not appear that the Chairman of the Authority has any power under the Ordinance to delegate in the manner in which he purports to delegate in this document. As I have already said it seems to me that the only power to delegate to a person is a power which can be given to a Committee by the Authority. It does not appear that the Chairman was signing this document as the Chairman or a member of any Committee, nor does it appear whether any such Committee, if there was one, was vested with the necessary powers by the Authority permitting them to delegate the duties, powers or functions which had been delegated to them by the Authority.

To the maxim *delegatus non potest delegare* there are certain well-recognised exceptions, where an authority to delegate will be implied, generally on the ground that there is no personal confidence reposed or skill required, and that the duties are capable of being equally well discharged by any person (*Halsbury* 3rd Edn. Vol. I, p. 170). To my mind this can have no application in this case as suing on behalf of the Authority is clearly a matter in which personal confidence is necessary and skill is required.

Nor does the *Carltona Case*[1] assist because there the *ratio decidendi* was that constitutionally the act or decision of the official is that of the Minister and so in law there is no delegation. In the present case the Authority is a statutory corporation whose acts, and the acts of whose servants, are regulated by the Statute, the Rural and Industrial Development Authority Ordinance, 1953.

I was therefore unable to hear the Assistant Rural Development Officer as the document he produced did not, in my opinion, delegate any of the powers of the Authority to him. Whether a duly appointed representative of the Authority has a right of audience in the High Court on behalf of the Authority is another matter and one which I do not have to decide. Reference however to the Annual Practice 1957, at p. 222, under the heading Corporations, suggests that corporations, whether incorporated by charter, special Act of Parliament or registration, cannot appear except by Counsel. The authority for this is given as *Frinton U.D.C.* v. *Walton Sand, etc., Co.*,[2] but regrettably this authority is not available here.

Order accordingly.

HO AW HUAN v. REG.

[A. Cr. J. (Rose C.J.) June 29, 1960]

[Singapore — Magistrate's Appeal No. 57 of 1960]

Criminal Law and Procedure — Presumption — Person found in, or escaping from a place used for the purpose of smoking opium — Construction.

Dangerous Drugs — Dangerous Drugs Ordinance (Cap. 137), ss.10(2) and 37(c) — Presumption — Evidence.

The appellant in this case was convicted of being found in a place used for the purpose of smoking prepared opium contra section 10(2)(b) of the Dangerous Drugs Ordinance. In his grounds of decision the learned Magistrate said "upon taking all the evidence produced in support of the prosecution I held that a *prima facie* case against the accused had been made out with the aid of section 37(c) (Cap. 137), which, if unrebutted

would warrant the conviction of the accused." It was contended for the appellant that the inference to be drawn from this passage is that the learned Magistrate relied, at any rate in part, upon the presumption section of the Ordinance, and was therefore presumably not completely convinced by the facts as deposed to by the prosecution witnesses.

Held: (1) the purpose of section 10(2)(b) of the Ordinance is to penalise only those persons who are found in or escaping from a place that is used for the purpose of smoking opium. The section cannot be stretched to cover a case of a person being found in a place which is not being used for the purpose of smoking opium, and therefore the presumption clause, having regard to the principle of interpretation would be inapplicable. The presumption under section 37(c) of the Ordinance expressly states that the presumption that the premises are used for the purpose of smoking or consuming a dangerous drug is subject to the escape clause "until the contrary is proved";

(2) if the evidence adduced by the prosecution, or the cumulative effect of the evidence adduced both by the prosecution and by the defence, leads the Court to the conclusion that the premises in question are not being currently used for the smoking of opium, then it would seem that the contrary has been proved;

(3) in the present case it is abundantly clear that there was ample material upon which the learned Magistrate could — and indeed must — have found that the premises were in fact being used for the smoking of opium. There was therefore no need for any invocation of a presumption; the learned Magistrate's reference to the presumption section cannot be regarded as derogating from the authority of his finding on the fact;

(4) the appeal must be dismissed and the conviction and sentence affirmed.

Case referred to:—

(1) *Ang Hian & Ors.* v. *R.* [1959] M.L.J. 255.

MAGISTRATE'S CRIMINAL APPEAL.

David Marshall for the appellant.

Choor Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Rose C.J.: The appellant was convicted of being found in a place used for the purpose of smoking prepared opium contra section 10(2)(b) of the Dangerous Drugs Ordinance (Chapter 137).

In his grounds of decision the learned Magistrate said:

"Upon taking all the evidence produced in support of the prosecution I held that a *prima facie* case against the accused had been made out with the aid of Section 37(c) Cap. 137, which, if unrebutted would warrant the conviction of the accused."

Learned counsel for the appellant contends that the inference to be drawn from this passage is that the learned Magistrate relied, at any rate in part, upon the presumption section of the Ordinance, and was therefore presumably not completely convinced by the facts as deposed to by the prosecution witnesses.

In *Ang Hian & Ors.* v. *Regina*[1], it was held that section 10(2)(b) of the Ordinance must be interpreted to mean that the place in question must have been contemporaneously or currently used for smoking or otherwise consuming prepared opium. It was suggested, however, that evidence of very recent use would, no doubt, be sufficient to satisfy the contemporaneous test.

In the course of the argument in the present case a discussion arose as to whether there was an apparent conflict between the *ratio decidendi* of the *Ang Hian case* and the presumption section of the Ordinance.

In my opinion no substantial difficulty arises, as, even if there was no escape clause in the presumption section, the general principle of the interpretation of statutes would, in my opinion, lead one to the same conclusion. As Mr. Maxwell says at page 229 in his book on The Interpretation of Statutes (10th Ed.):

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

It seems to me to be beyond argument that the purpose of section 10(2)(b) is to penalise only those persons who are found in, or escaping from, a place that is used for the purpose of smoking opium. The section cannot, in my view, be stretched to cover a case of a person being found in a place which is not being used for the purpose of smoking opium; and therefore the presumption clause, having regard to the principle of interpretation above stated, would seem to be inapplicable.

In any event, section 37(c) of the Ordinance expressly states that the presumption that the premises are used for the purpose of smoking or consuming a dangerous drug is subject to the escape clause "until the contrary is proved".

If, therefore, the evidence adduced by the prosecution, or the cumulative effect of the evidence adduced both by the prosecution and by the defence, leads the Court to the conclusion that the premises in question are not being currently used for the smoking of opium, then it would seem that the contrary has been proved.

Having regard to the particular facts of the present case under appeal, the above questions are somewhat academic as it is abundantly clear that there was ample material upon which the learned Magistrate could — and indeed must — have found that the premises were in fact being used for the smoking of opium. There was therefore no need for any invocation of a presumption; and I do not regard the learned Magistrate's reference to the presumption section as derogating from the authority of his finding on the facts.

No argument was addressed to me on the question of sentence, which is manifestly appropriate.

For these reasons the appeal must be dismissed and the conviction and sentence affirmed.

Appeal dismissed.

Solicitors: *Marshall & Smith.*